

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**APPLICATION TO AUTHORIZE THE ISSUANCE OF  
A BUILDING PERMIT FOR STRUCTURE WITHIN PROPOSED RIGHT-OF-WAY**

**DECISION**

Request: Authorization to Issue Building Permit for a Structure within a Proposed Right-of-Way  
Applicant: Winfield Kelly, Jr.  
Opposition: None  
Hearing Date: March 3, 2021  
Examiner: Maurene Epps McNeil  
Recommendation: Approval

**NATURE OF REQUEST**

- (1) The subject request is to authorize the issuance of Permit No. 16977-2020-CGU to construct a multi-tenant commercial/retail/service building within the proposed right-of-way of E-1, associated with the interchange of Central Avenue (MD 214), Crain Highway (US 301) and Old Central Avenue as depicted (in differing iterations) on PGAtlas, the 2009 County Master Plan of Transportation and the US 301 Access Control Study Plan prepared by the State Highway Administration ("SHA") in 1999. The subject property consists of approximately 7.93 acres in the C-M (Miscellaneous Commercial) Zone, and is identified as 7111 NE Crain Highway, Bowie, Maryland. The subject property is located approximately 2,000 feet beyond the municipal boundaries of the City of Bowie, Maryland.
- (2) The property is solely owned by Winfield M. Kelly, Jr, the Applicant. (Exhibits 14 and 15)
- (3) No one appeared in opposition to the request.
- (4) At the close of the hearing this Examiner contacted MNCPPC staff to ask that they review the record in the case and submit a comment on the discrepancies as to the location of the ultimate right-of-way at issue. Staff reviewed the record and consulted with the State Highway Administration ("SHA"). On May 6, 2021 staff submitted two exhibits in response to my request and the record was closed at that time. (Exhibits 27 and 28)

## FINDINGS OF FACT

(1) The property is currently unimproved. After Applicant's purchase, he converted a barn on site into a restaurant. The restaurant burned down two years later. In 1986, the Planning Board approved a one-parcel Preliminary Plan of Subdivision for the property (PPS 4-86018) that included a modification to revise the Plan "to show a building restriction line for the future right-of-way of the Master Plan proposed interchange...." (Exhibit 5) This building restriction line is shown on the instant building permit application. (Exhibit 4; T. 10-11)

(2) Applicant applied for Building Permit No. 16997-2020-CGU to initiate construction of a 10,050- square-foot building and associated parking on the site. The Department of Permitting, Inspections and Enforcement ("DPIE") first placed the application on hold after receipt of comments from the staff with the Maryland-National Capital Park and Planning Commission ("MNCPPC"), and ultimately denied it. (T. 8-9, 59) Applicant then filed the instant request.

(3) Applicant provided an explanation as to what it intends to construct on the site and how the request comports with the requirements of the Zoning Ordinance:

The Applicant would like to construct a multi-tenant commercial/retail/service building consisting of approximately 10,050 square feet. Approximately 71 parking spaces and one loading space are also proposed to serve the uses permitted in the C-M Zone in accordance with Section 27-461 (b) of the Zoning Ordinance....

While the property as a whole consists of 7.93 acres, only approximately 2.27 acres of the property is proposed to be disturbed for the construction of the multi-tenant building, leaving 5.73 acres of the property undisturbed. Preliminary Plan of Subdivision (PPS) 4-86018 was approved for the subject property by the Planning Board on April 10, 1986, and the resolution of approval (PGCPB Resolution No. 86-109) was adopted on the same day.... The following land use quantities were approved for the property with PPS 4-86018:

1. Motel (with 150 rooms)
2. Restaurant (3,200 sq. ft. with 100 seats)
3. Restaurant (13,500 sq. ft. with 110 seats)
4. Bank (2,400 sq. ft.)
5. Self-Service Gas Station
6. Retail (1,500 sq. ft.)
7. Retail (1,500 sq. ft.)
8. Car Wash (2,400 sq. ft.)

Subsequent extensions were granted by the Planning Board extending the validity date of the approved PPS until April of 1989. The final plat of subdivision was recorded in Land Records on May 8, 1989....

It should be noted that the current building permit only proposes a multi-tenant commercial/retail/service building consisting of approximately 10,050 square feet and its associated parking and loading. The small amount of development that is currently proposed on the 7.93 -acre property is only a fraction of the development that was previously approved by the Planning Board with PPS 4-86018. Further, when Final Plan of Subdivision ... was recorded in Land Records ... all required right-of-way dedication associated with the US Route 301..., MD Route 214 ... and Old Central Avenue interchanges was conveyed to SHA as required....

The development currently proposed would take up to 99,046 square feet (or 2.2737 acres) of the 7.93-acre property, therefore leaving 249,640 square feet (or 5.73 acres) of the property vacant and undisturbed should additional acquisition be required by SHA in the future....

[T]he Applicant will incur a financial hardship if the property is unable to be developed in some manner. [T]he Applicant has paid a significant amount of taxes to Prince George's County over a period of several decades and has been unable to use the property in accordance with its underlying C-M (Commercial-Miscellaneous) zoning designation due to its location within a master planned roadway....[T]he development being proposed at this time is a small ... fraction of the development previously approved for the property with PPS 4-86018. As a result, the Applicant was required to demonstrate adequate public facilities at the time of PPS for a much larger development than what is currently proposed. The interest of the County and the State will be generally served by the Applicant's request as all required right-of-way dedication associated with the US Route 301 ..., MD Route 214 ... and Old Central Avenue interchange has already been conveyed to SHA as required.....

The US 301 Access Control Study Plan prepared by SHA in January of 1999 is their latest concept for potential interchange improvements.... The study further demonstrates that subject property is not proposed for further acquisition by SHA. It should be noted that at no time has SHA contacted the Applicant, to either purchase the property, or to request further acquisition of the property. Since all the right-of-way dedication requested by SHA during the review of PPS 4-86018 was being conveyed to the operating agency, the Planning Board was able to find that the integrity of the Functional Master Plan of Transportation, General Plan, and Area Master Plan was being preserved and that the subdivision, as modified, met the legal requirements of Subtitle 24 of the Prince George's County Code and of Article 28, Annotated Code of Maryland....

(Exhibit 2(b))

(4) Mr. Paul Woodburn, accepted as an expert in civil engineering, testified that the building restriction line on the approved plat of subdivision basically mirrored the alignment set forth by the SHA in its 1999 Control Access Study, and the building permit ultimately denied by the Department of Permitting, Inspections and Enforcement ("DPIE") should have been issued. (T. 12-13)

(5) Mr. Michael Lenhart, accepted as an expert in the area of transportation planning, submitted a memorandum explaining the need for the instant request and providing maps from the 2009 Countywide Master Plan of Transportation, the 1999 SHA US 301 Access Control Study and PGAtlas that show the varying impact each has upon the property. This Memorandum provides, in pertinent part, as follows:

The 2009 Master Plan of Transportation provides mapping of the entire county. Map 20 of the Master Plan provides the proposed master planned interchange at US 301 and MD 214.... The future ramp from EB MD 214 to NB US 301 is NOT located within the area of proposed building. The County Master Plan is based upon the 1999 SHA Access Control Study, however, the County Master Plan appears to be much less detailed in that it is simply a line sketch of the future interchange and does not appear to be to scale.

The SHA's US 301 Access Control Study was completed in 1999 prior to the implementation of the 2009 Countywide Master Plan of Transportation. As noted above, the Countywide Master Plan of Transportation appears to be based upon [the Access Control Study] ... with much less detail and not to scale.

The PGAtlas Master Plan of Transportation layer on the County GIS system encumbers a much larger area than the SHA's US 301 Access Control Study and the 2009 Countywide Master Plan of Transportation. Particularly as it relates to the Winfield Kelly property in that neither the SHA Access Control Study nor the Countywide Master Plan of Transportation indicate that the Winfield Kelly property is significantly impacted by the future interchange. However, the PGAtlas Master Plan of Transportation indicates that the entire property is burdened by the future interchange....

A review of the 2009 Countywide Master Plan of Transportation (Map 20) ... reveals that [it] does not require the use of the entire property, and in fact has a minor impact on the property....

A review of the SHA'S US 301 Access Control Study (1999) ... reveals that [it] does not require the use of the entire property, and in fact, requires little to no usage of the Winfield Kelly property. This plan shows the upgrade of MD 214 to an expressway facility and would eliminate the existing loop ramp from southbound US 301 to eastbound MD 214. In place of that ramp, a new ramp would be constructed through that area from eastbound MD 214 as a flyover ramp to the future relocated northbound and southbound US 301 freeway.... [T]hat right of way line does not intrude whatsoever into the Winfield Kelly property, except for a small area to the west of the existing loop ramp which is to be eliminated....

A review of the existing plat shows that there is an existing building restriction line on the plan that appears to very closely correspond to the future SHA right of way line for the master planned interchange. In fact, the SHA's right of way line on the SHA U.S. 301 Access Control Study does not appear to be as restrictive as the building restriction line in the plat....

Based on the PGAtlas interpretation of the Master Plan of Transportation, the entire property is encumbered by the master plan right of way; therefore, it would be impossible

for any of the property to yield a reasonable return unless the permit is granted. Therefore 27-259(g)(A) is satisfied. In fact, if the permit is denied, the property owner would be denied the right to develop this property and this would essentially[be] a property taking without just compensation. I would further offer that this property has already been subdivided and is an approved building lot. When properties go through the subdivision process, they are evaluated by M-NCPPC to determine if there are any master plan of transportation improvements that should be referred to the operating agency (SHA or DPW&T) for potential reservation. If an agency determines the reservation is appropriate, the property comes off the tax rolls for up to three years to allow the operating agency the necessary time to acquire the necessary right of way for future public use. Since this property already has an approved subdivision, they are beyond the ability to be considered for reservation, and have continued to pay taxes on this property. If this applicant is denied the request to build in the right of way, not only will they be unable to yield a reasonable return, but they will also be held hostage for an undetermined period of time where they cannot develop the property but must continue to pay property taxes....

[T]he approval of the permit to build in the right of way would not impede or hamper the SHA's US 301 Access Control Plan or the Countywide Master Plan of Transportation.... [T]hese documents do not encumber this whole property, and in fact, the existing building restriction line on the plat appears to be more than sufficient to allow the master plan to be realized, while allowing the applicant the right to develop their property as allowed. This allows the interests of the County and the property owner to be balanced by protecting the needs of both parties, and also maintains the integrity of the Master Plan of Transportation....

It is unclear why the PGAtlas GIS system identifies the entire Winfield Kelly property as being impacted by the master plan of transportation, but it is possible that the entire property was simply marked on the PGAtlas GIS system as an indication that there is some impact to the property from the future master plan of transportation. While there is a small impact to the property, it is clear that the majority of the property is not impacted, and those areas that are needed are protected by the building restriction line....

(Exhibit 24, pp. 1-6)

(6) At the hearing, Mr. Lenhart further explained the lesser impact on the subject property if the information in the SHA U.S. 301 Access Control Study or the 2009 Master Plan of Transportation is utilized:

[Utilizing Exhibit 24, we see there will be a] ramp [going] eastbound 214 to go south onto the future 301 freeway, and it also flies over 301 and continues north onto Route 301. That ramp does not exist today, but under the state's plan and the master plan of transportation, that would cut across a small portion of the Winfield Kelly [property] at this location. It would ... eliminate the existing loop ramp that goes from southbound 301 to eastbound 214, and that new loop ramp gets constructed over at the relocated 301 ... interchange, which is several hundred feet or so to the east of the existing interchange...

[I]t's obvious and evident that the master plan of transportation does not actually impact the whole property; it only impacts the small corner behind the building restriction line...

The 2009 master plan of transportation, it's map 20 ..., simply shows just a large dashed line. There's no real scale to it .... The SHA plan is a much more detailed engineering plan....They have their future right-of-way; and so, that is behind the building restriction line. If we can agree, and it is my opinion that this right-of way establishes the extent of the future master plan of transportation requirements [that are] identified in the State Highway plan, and that's identified on the 2009 master plan of transportation, then anything that's built to the south of the building restriction line in the buildable area of the property will be outside of the master plan right-of-way.

The only thing that encumbers this property is the fact that the P.G. Atlas ... the GIS layer, for whatever reason labels the entire property as encumbered by the master plan and we don't believe that that is, in fact, the case based upon these documents....

(T. 29-32)

(7) John Ferrante, accepted as an expert in the area of land use planning, provided the following testimony on Applicant's behalf:

Just to back up to 27-259(b)(1), which requires the denied permit, I just wanted to note for the record that the permit was denied on November 4th of 2020 and the subject request was submitted to the clerk of the council's office on November 30, 2020, within 30 calendar days of the denial.

Moving on to 27-259(g), the criteria for approval, the district council shall only approve the request if it finds that the entire property cannot yield a reasonable return to the owner unless the permit is granted. As we discussed here today, the entire property is located within the proposed right-of-way as shown on pगतlas.com, as currently undeveloped. As a result, the property cannot yield any return unless the permit is granted.

B, reasonable justice and equity are served by issuing the permit. The preliminary plan records [obtained] from 1986 demonstrated that the preliminary plan, which is 4-86018, was approved on April 10, 1986. The land use quantities that were approved with that preliminary plan were a motel with 150 rooms, a 3,200 square-foot restaurant with 100 seats, a 13,500 square-foot restaurant with 110 seats, a 2,400 square-foot bank, a self-service gas station, two retail buildings consisting of 1,500 square foot each, and a 2,400 square-foot car wash with eight bays.

The final plat was recorded in land records on May 8, 1989. Although no development has occurred on the property since the time the prior preliminary plan was approved, this applicant did obtain approval of preliminary plan and recorded a final plat within [t]he specified validity period. As a result, the subject property should be entitled to a specific amount of development.

In the referral for the 1986 preliminary plan, Park and Planning's Transportation Section did identify the northern section of the property [as] affected by construction plans for the U.S. 301 Maryland 214 interchange. However, at that time, neither the Transportation Section of Park and Planning, or State Highway, requested acquisition of the property, or that it be placed in reservation.

When the final plat for Mr. Kelly was recorded in land records, building restriction lines were established along portions of the northern property line abutting the 214 right-of-way, and all requested right-of-way dedication associated with the interchange, and along Old Central Avenue, was properly conveyed.

The applicant has paid taxes on this commercially zoned property for several decades with no return and has already obtained approval of a preliminary plan which included dedicating a significant portion of the property to State Highway as needed to implement the current ramps, and the Maryland 301/214 interchange. As a result, reasonable justice and equity are served by issuing a permit.

C, the interest of the County is balanced with the interest to the property owner. The applicant has already incurred expenses by applying for an[d] obtaining approval of a preliminary plan that was required to develop the property. As a result, the applicant will incur a financial hardship if the property is unable to be developed in some manner. As previously stated, the applicant has paid a significant amount of taxes to Prince George's County over a period of several decades and has been [un]able to use the property in accordance with its underlying CM zoning designation due to its location within the master plan right-of-way.

The interest of the County and the state will be generally served by the applicant's request as all previously requested right-of-way dedications associated with the interchange on Old Central Avenue has already been conveyed to the operating agency.

And, finally, D, the integrity of the functional master plan of transportation, general plan and area master plan is preserved. As noted in Mr. Lenhart's testimony, the ... 301 access control study prepared by State Highway in 1999 is their latest concept for potential interchange improvements. The study further demonstrates that the subject property is not proposed for further acquisition by State Highway, and [it] should also be noted that at no time State Highway has contacted the applicant, either purchased the property, or to request further acquisition.

Since all the right-of-way dedication requested by State Highway during the review of the preliminary plan was conveyed out to the operating agency, as Mr. Brown noted, the Planning Board was able to find that the integrity of the master plan, general plan, area master plan was being preserved; that the subdivision met the legal requirements of subtitle 24.

The development currently proposed has been designed to meet all current stormwater management[,] zoning ordinance, landscape manual, wild[life] and [conservation] ordinance requirements, and will respect the established [building] restriction lines that are shown on a recorded plat. Therefore, preserving the integrity of the master plan, general plan, and area master plan....

(T. 61-65)

(8) Applicant submitted copies of real property tax bills that indicate he paid over \$23,000, annually, in assessments on the property for the 2018-2019, 2019-2020, and 2020-2021 tax years. (Exhibit 23) The owner further testified that since his purchase of the site he “paid taxes from the very beginning ... in the \$60,000 range for a while ... [and] probably a million and a half, maybe \$2 million [in total].” (T. 52)

(9) As noted, *infra*, subsequent to the hearing, and at my request, Staff from MNCPPC submitted an email from a representative of SHA that agreed that the development proposed by Applicant would not impact the right-of-way proposed in SHA’s 301 Access Control Study (Exhibit 27), and provided a new comment on the differing rights-of-way which provides, in pertinent part, as follows:

The Transportation Planning Section of the Prince George’s County Planning Department has reviewed the application referenced above to provide relevant information for the authorization to issue a building permit for structures within a proposed right-of-way.

#### **Application and Background Information**

The applicant has proposed to construct a multi-tenant commercial/retail/service building consisting of approximately 10,050 square-feet. The subject property is 7.93-acres and is in the southwest quadrant of the intersection of MD 214 and US 301. The property is located within the ultimate master plan right-of-way of E-1, associated with the planned interchange of MD 214 (E-1), US Route 301(F-10), and Old Central Avenue as depicted on the *2009 Approved Countywide Master Plan of Transportation*. This property is subject to the *2006 Approved Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B & 74B* (area master plan). Many of the transportation facility recommendations from the 2006 area master plan have been superseded by the 2009 MPOT, including the interchange at US 301 and MD 214.

#### **Master Plan Rights-of-Way**

US 301 is a master planned freeway, MD 214 is an existing expressway and Old Central Avenue is not a master planned roadway.

The *2006 Approved Master Plan for Bowie and Vicinity and Sectional Map Amendment for Planning Areas 71A, 71B & 74B* recommends that US 301 from US 50 southward be constructed as a six to eight lane freeway. There is an additional, continuous, parallel arterial roadway (A-61), which is to the east of the subject site. This roadway improvement was also included with several planning studies by the State Highway Administration which examined various interchange concepts.

PG Atlas, the County’s online mapping database and GIS tool indicates that all of the subject property is within the master plan rights-of-way. This tool is used to quickly identify property May 6, 2021 within a planned right-of-way and assess whether additional information may be necessary to ascertain a property’s location in reference to the planned right-of-way. Since an interchange isn’t as clear an interpretation as measuring distance from a street centerline, additional information from the SHA is needed.

The *2009 Approved Countywide Master Plan of Transportation* depicts US 301 as a planned freeway along with the planned interchange for MD 214 as it impacts the subject site. This graphical representation shows several swooping roadways and loops to depict the on and off ramps of the interchange and includes the recommendations from the *area master plan, the MPOT*, as well as sections from the Maryland Department of Transportation State Highway Administration (SHA)'s 1999 US 301 Access Control Study for the planned interchange location.

The US 301 Access Control Study from 1999 provides more detailed concepts for the proposed conversion of US 301 to a fully access controlled freeway, which is part of the larger US 301 South Corridor Transportation Study. Currently, the US 301 South Corridor Transportation Study is in the Consolidated Transportation Program, however, it is on hold awaiting funding to complete planning and to advance subsequent phases.

Even though these improvements are not in final design, SHA reviewed the subject site and determined the following based off correspondence dated 4/26/21:

*...the proposed development of the subject parcel poses no impact to the improvements depicted in the 1999 US 301 Access Control Study. The subject parcel is not within MDOT SHA right-of-way.*

Further comments from SHA indicated that the plans from the 1999 US 301 Access Control Study are not design plans, are conceptual in nature and should only be used for planning purposes. Additionally, the Planning Department and the County Roadway and Permitting agencies should be mindful that these plans are subject to change, should funds become available to advance the interchange project.

### **Conclusion**

The right-of-way depicted on PG Atlas is a planning-level approximation of a potential right-of-way that may be necessary to build an interchange as recommended in the *2009 Approved Countywide Master Plan of Transportation*. However, as described by the State Highway Administration, the proposed development will not impact the interchange as depicted in the 1999 US 301 Access Control Study, which is the basis for the Master Plan right-of-way.

The Maryland State Highway Administration has indicated that the proposed development is not located in the MDOT SHA right-of-way, however the concepts for the US 301/MD 214 interchange are subject to change once design plans are funded and finalized. Additionally, any subsequent building permit applications for the subject site should be reviewed by SHA to determine their impacts on location to the proposed interchange.

(Exhibit 28)

## APPLICABLE LAW

(1) Pursuant to Section 27-259 of the Zoning Ordinance, the District Council must approve the instant request, and follow certain criteria in doing so. This Section provides, in pertinent part, as follows:

(a) **Authorization.**

(1) With the exception of an arena (stadium) proposed to be constructed on land leased or purchased from a public agency, no building or sign permit (except as provided in Part 12 of this Subtitle) may generally be issued for any structure on land located within the right-of-way or acquisition lines of a proposed street, rapid transit route, or rapid transit facility, or proposed relocation or widening of an existing street, rapid transit route, or rapid transit facility, as shown on a Master Plan; however, the Council may authorize the issuance of the building or sign permit in accordance with this Section. For the purposes of this Section, "Master Plan" means the General Plan, the Functional Master Plan of Transportation, or any Adopted and Approved Area Master Plan or, if not yet approved, any such Master Plan adopted by the Planning Board, unless the Plan has been rejected by the Council.

(2) Notwithstanding the definition of a "street" (Section 27-107.01), building permits may be issued without such Council authorization for any structures on:

(A) Land which:

(i) Was in reservation but is now not in reservation; and

(ii) Has not been acquired and is not being acquired.

(B) Land which was subdivided after the adoption of a Functional Master Plan of Transportation, Area Master Plan, or the General Plan, but was not reserved or required to be dedicated for a street or rapid transit route or facility shown on the Plan.

(3) A permit may be issued without such Council authorization for the replacement of a legally erected sign if the replacement sign is otherwise in conformance with this Subtitle, is not an intensification of signage for the subject property, and if the proposed transportation facility is not fully funded for construction in the adopted County Capital Improvement Program or the current State Consolidated Transportation Program.

(b) **Application.**

(1) Where a Special Exception, Detailed Site Plan, Specific Design Plan, or Departure is pending, or where application for issuance of a permit has been made and recommended for denial pursuant to Sections 27-254 and 27-255 of this Subtitle, the owner of the land may make a written request to the District Council to authorize the issuance of the permit. In the latter case, the recommendation for denial of the permit shall not have been based on any failure of the applicant to comply with any requirement of this Subtitle (other than Subsection (a) of this Section), Subtitle 24, the Regional District Act, or any condition placed on the property in a zoning case or subdivision plat approval. The request shall be in writing and shall be filed with the Clerk of the Council within thirty (30) days after notice of the denial is given.

(2) Along with the application, the owner shall submit the following:

(A) A statement listing the names and the business and residential addresses of all individuals having at least a five percent (5%) financial interest in the subject property;

(B) If any owner is a corporation, a statement listing the officers of the corporation, their business and residential addresses, and the date on which they assumed their respective offices. The same statement shall also list the current Board of Directors, their business and residential addresses, and the dates of each Director's term. An owner that is a corporation listed on a national stock exchange shall be exempt from the requirement to provide residential addresses of its officers and directors;

(C) If the owner is a corporation (except one listed on a national stock exchange), a statement containing the names and residential addresses of those individuals owning at least five percent (5%) of the shares of any class of corporate security (including stocks and serial maturity bonds);

(3) For the purposes of (A), (B), and (C), above, the term "owner" shall include not only the owner of record, but also any contract purchaser.

\* \* \* \* \*

**(g) Criteria for approval.**

(1) The District Council shall only approve the request if it finds that:

(A) The entire property cannot yield a reasonable return to the owner unless the permit is granted;

(B) Reasonable justice and equity are served by issuing the permit;

(C) The interest of the County is balanced with the interests of the property owner; and

(D) The integrity of the Functional Master Plan of Transportation, General Plan, and Area Master Plan is preserved.

**(h) Conditions placed on approval.**

(1) If the Council authorizes the issuance of the permit, it shall specify the exact location, ground area, height, extent, and character of the structure to be allowed. The Council may also impose reasonable conditions which benefit the County.

\* \* \* \* \*

**CONCLUSIONS OF LAW**

(1) SHA's 1999 US 301 Access Control Study Plan, the 2009 Master Plan of Transportation, and PGAtlas all indicate (in varying degrees) that some, or all, of the subject property lies within the proposed right-of-way for E-1, associated with the interchange of Crain Highway (US 301) and Central Avenue (MD 214). As a result, DPIE has denied Permit No. 16977-2020-CGU, after MNCPPC'S recommendation of denial thereof, unless and until the instant Application is approved. (Section 27-259(b)(1))

(2) If we agree with DPIE (and MNCPPC) that the most invasive interpretation of the above referenced plans (found in PGAtlas) should be applied, the entire property has been placed within the ultimate right-of-way. If the right-of-way indicated on the SHA Access Control Study and the Master Plan of Transportation is determined to be correct, a portion of the property lies within the proposed right-of-way, but future development in accordance with the recorded plat will not be as severely affected. Accordingly, Applicant's property cannot yield a reasonable return unless the request is granted or the right-of-way set forth in the SHA Access Control Study/2009 Master Plan of Transportation is applied. (Section 27-259 (g)(1)(A))

(3) Reasonable justice and equity will be served by allowing Applicant to either construct within the right-of-way as depicted in PGAtlas or to determine that the SHA Access Control Study/2009 Master Plan of Transportation right-of-way is to be utilized, especially since all required right-of-way dedication for the interchange was conveyed to SHA through recordation of the final plat; SHA has concluded that the build-to-line shown on the approved plat of subdivision comports with the right-of-way identified for the proposed interchange as depicted in its 1999 US 301 Access Control Study Plan; and, no time table exists as to when (or if) any further right-of-way for the interchange will be required. (Section 27-259(g)(1)(B))

(4) Approval of the Application will balance the interest of Applicant and the County—Applicant will be able to develop property that has remained unimproved for many years and the County will benefit from thriving businesses operating on the site, and not a vacant lot (and possible eyesore). (Section 27-259(g)(1)(C))

(5) The integrity of the applicable Plans will be preserved since: the Plans do not specifically address the uses on site; Applicant is prepared to honor the rights-of way shown on the 2009 Master Plan of Transportation and the SHA'S 1999 US 301 Access Control Study; and, SHA has clarified that the proposed development "poses no impact to the improvements depicted in the 1999 US 301 Access Control Study." (Exhibit 27; Section 27-259(g)(1)(D))

## **RECOMMENDATION**

It is the recommendation of this Examiner that:

- (1) The District Council find that the proper right-of-way to be applied is the one depicted in the 1999 SHA US 301 Access Control Study and the 2009 Master Plan of Transportation (although there is less detailed engineering information in the latter);
- (2) PGAtlas information on the location of the proposed right-of-way shall not be utilized for this property; and,

- (3) Applicant shall be allowed to construct in accordance with Permit No. 16997-2020-CGU provided that all development shall honor the building restriction line shown on the plat of subdivision.